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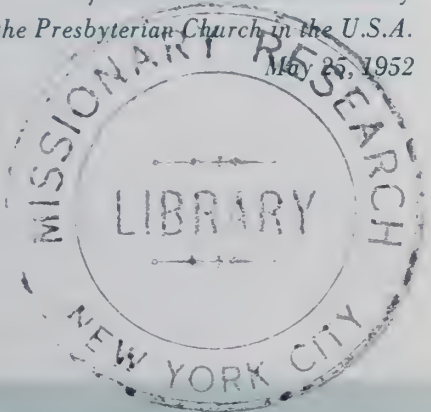
INTERNATIONAL
COVENANT
ON
HUMAN RIGHTS

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delivered at the Interracial Fellowship Meeting
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INTERNATIONAL COVENANT ON HUMAN RIGHTS

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.

On the cornerstone of this profession in our Declaration of Independence, the amendments to the United States Constitution have progressively built a safeguard against the denial of basic human rights and have extended protection of the law equally to all men. There has thus been erected as a first distinguishing mark of our domestic society a high standard of freedom which represents our heritage and our goal. There is, however, a second distinguishing mark of equal importance. Where we have failed to achieve in practice the lofty standard to which we are committed by declaration and by law — especially in discrimination on grounds of race and color — an uneasy conscience has pricked complacency and free men, by processes of freedom, continue to seek for every one the full enjoyment of human rights.

Throughout our history we have been predominantly concerned that the freedom which we enjoy shall be the lot of all men everywhere. The more immediate impact of distant events in a constantly shrinking world underlines the necessity of our present concern for the observance of human rights in every land. When freedom is curtailed at one point, it inevitably threatens the fabric of freedom throughout the world and may endanger world peace. Accord-

ingly, in the Charter of the United Nations we have acknowledged as a major objective the achievement of international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." We have also pledged ourselves to take "joint and separate action in cooperation with the organization for the achievement of these purposes."

While the various organs of the United Nations have designated obligations in the field of human rights, the very nature of the Commission on Human Rights brings to it a distinctive responsibility. By its terms of reference the Commission is empowered to pursue a fairly wide range of activities. However, since it was brought into being, it has in fact devoted most of its efforts to the construction of an international bill of rights. The Universal Declaration, which was completed and adopted in the course of the Third Session of the General Assembly at Paris in 1948, represents a first significant achievement. The Commission is now in process of drafting two Covenants — one dealing with civil and political rights and the other with economic, social and cultural rights.

As this process of drafting goes forward, a curious and dangerous situation is developing within the United States. An extremely critical attitude, originating in fairly limited circles, is claiming a wider audience and is threatening to obstruct a sound contribution by the people and government of the United States. On the one hand, the International Covenant on Human Rights is being used by neo-isolationists as a ground for their opposition to continued United States participation in the United Nations. On the other hand, serious questions are being raised about the soundness of the effort at this time to promote the observance of human rights by means of a covenant. Neither the unfounded criticisms nor the serious questions should go unheeded. Moral responsibility for promoting human rights throughout the world as well as for refining our own practices requires an exposure of false criticism and at the same time a frank approach to any inherent weaknesses.

In directing my observations particularly to the International Covenants on Human Rights, I do not want to give the impression that an international treaty

is the only or even the primary way in which international action can promote the observance of human rights. However, it is highly important that we should separate the chaff from the wheat of criticism and by clear thinking determine our best contribution. I shall in due course suggest various additional steps which can prove helpful in their own right and can make the Covenants more effective instruments when they are ready for final approval.

THE DECLARATION AND THE COVENANT

At the outset we must have clearly in mind the distinction between the Universal Declaration of Human Rights and the projected Covenants. That distinction is highly important because numerous critics are, from malicious intent or unhappy ignorance, confusing these documents.

The Universal Declaration was proclaimed by the United Nations General Assembly in 1948 "as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. . . ." The Declaration, by its nature, has not required and will not require action by the United States Senate or by the appropriate governing body of any other country. Notwithstanding the absence of such requirement, the Declaration in its short history has made a significant impact. Its standards and frequently its very language have been incorporated in national constitutions and laws, in international treaties and agreements, in trusteeship arrangements, and in regional conventions. Its provisions have been taken into account in court decisions and through education are affecting the thinking and practice of people in many parts of the world.

The Covenants which are now being drafted are intended to be in the form of treaties. Any appraisal of their provisions can in no sense be based upon terms which are contained in the Declaration. Moreover, the tendency to criticize the Covenants at this stage as though they were a final product is entirely unjust. Final judgment must clearly await completion of the drafts.

UNFOUNDED CRITICISMS

On this background we are ready to turn to criticisms which appear to have no foundation in fact. These come from many sources and in a variety of forms. While full discussion is obviously impossible, the major points of attack must be taken into account.

1. *The International Covenants will not bring about any restriction or curtailment of the rights which we now enjoy in the United States.*

One of the most widely publicized criticisms is that people of the United States will lose their rights if their Government should ratify a covenant. Let me point out the grounds for the criticism and indicate that they are absolutely untenable and almost ludicrous.

Critics center attention on articles dealing with freedom of religion, expression and assembly contained in the Covenant on Civil and Political Rights. The article on freedom of thought, conscience and religion will serve as a typical case. Usually criticism is directed at the second paragraph of this article which has to do with possible limitations. It reads as follows:

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are pursuant to law and are reasonable and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

In most instances critics fail to quote the first paragraph which contains the affirmative safeguards:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

In paraphrase, the article as a whole states that a person has the right to manifest his religion or belief and that there can be no limitation upon that freedom except in accordance with laws that are needed to protect the interests of the society to which he belongs. The critics claim that the United States would thus be obligated to pass restrictive legislation. This perverts the provision in the article on freedom of religion, for the article states that a country may pass *only* such

laws as are "reasonable and necessary" to protect public safety, morals and the rights and freedoms of others. No country is obligated to pass such laws but it may not go beyond the point of reasonableness and necessity in the public interest.

This type of limitation is precisely the kind that has obtained in our country throughout the greater part of its history. Conclusive evidence may be found in the constitutions of various states. At least twenty-five state constitutions contain provisions which resemble the limitation paragraph in the present draft article on freedom of religion in the International Covenant. Let me quote a few of them:

The New York Constitution provides: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind . . . but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state." (Constitution of the State of New York of 1938, Article I, Bill of Rights, Section 3)

The Montana Constitution provides: "The free exercise and enjoyment of religious profession and worship, without discrimination, shall for ever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace or safety of the state, or opposed to the civil authority thereof, or of the United States . . ." (Constitution of the State of Montana of 1889, Article III, A Declaration of Rights of the People of the State of Montana, Section 4)

The Maine Constitution provides: "All men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious wor-

ship . . ." (Constitution of the State of Maine of 1820 and 1876, Article I, Declaration of Rights, Section 3)

One does not have to study constitutions or laws to discover that restrictions upon the manifestation of religion or beliefs are in effect in our own country. One need merely reflect upon common experience. For example, a nudist parade cannot march down Fifth Avenue; public morals would thereby be offended. In the interest of public order, traffic regulations would forbid a religious service on Times Square without necessary arrangements. Public safety laws permit only a specified number of people to assemble in a public building such as a church. In times of epidemics, congestion of large groups of people is prohibited. No matter what his religious point of view, a person must meet quarantine requirements when he returns to this country from foreign shores. We accept these limitations without thought or complaint because we are accustomed to them and consider them necessary for the public welfare. And such limitations are permitted not only under the Constitutions of the several states, but also under the Constitution of the United States.

Obviously, the fact that the Covenant permits limitations of this kind opens the way to abuse by any dictator or despot. That situation will obtain with or without a covenant.

Some critics have claimed that the provision for limitations would legalize despotic practices. In this connection, two points should be noted. First, if a ratifying government imposes restrictions by capricious administration and not by law as the Covenant requires, it violates its treaty obligation. Second, it also violates its treaty obligations if the laws by which it imposes limitations are bad, that is, if they are not reasonable and necessary. In either case — capricious administration or bad laws — another State Party to the Covenant can register a complaint with the Human Rights Committee. While the measures of implementation are at this stage mild and no assurance of satisfactory redress can be given, there is at least an official channel whereby complaints can be lodged and redress sought.

Some have also criticized the Covenant because it is not complete. It does not, for example, include an article on the right to hold property. The reason for this may be found in the fact that the conception of

property varies in different countries which are participating in the drafting. It does not mean that because the right to hold property is not contained in the Covenant, a country cannot recognize that right for its citizens. The Covenant clearly states this in Article 18, paragraph 2:

Nothing in this Covenant may be interpreted as limiting or derogating from any of the rights and freedoms which may be guaranteed under the laws of any Contracting State or any conventions to which it is a party.

The preservation of the rights which we now enjoy would, under a covenant, continue to rest entirely with the people and government of this country. Be it noted, however, that in so far as our practice does not conform to our standard, there will be a further incentive to mend our ways and to bring to reality the equal enjoyment of rights "without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

2. *The International Covenant on Human Rights will not change our form of Government into a Socialist State.*

This criticism is most prominently raised in connection with the Covenant on economic, social and cultural rights, having to do with the right to work, social security, education, and the like. Originally the provisions on these subjects were to be included in the same Covenant with the civil and political rights. By action of the United Nations General Assembly at its Sixth Session they are now to be incorporated in a separate document. While there are differences of opinion about the manner in which these rights shall be developed and final judgment cannot be made until the draft is ready for action, it is important to note that the provisions as they now stand will not, in any sense, require a change in our free institutions. While referred to as rights, the economic, social and cultural provisions are distinguished from the civil and political provisions in important respects.

The economic, social and cultural rights are drafted in relatively broad terms and stand as objectives which the nations should strive to attain. Recognizing that most governments could not achieve them immedi-

ately, their realization is to be *progressively* sought. The method of achievement will vary in accordance with the economic and political forms of a country; that is, legislative as well as other means will be used, and each nation shall be free to determine what means it desires to employ. At the present time there is no provision for complaints by one government against another and implementation involves mainly a system of progress reports.

In this connection, some critics say that, since we commit ourselves to achieve the economic, social and cultural ends, we have at least a moral obligation to pass legislation if we do not succeed by non-governmental processes. It is worthy of note that, without a Covenant, we have already passed laws on social security, old age pensions, unemployment compensation, and graded income taxes. This procedure can be continued or reversed as we see fit. The important point is that we use our resources to seek legitimate goals. Are we afraid to accept the challenge that we can achieve higher economic, social and cultural levels by free processes than would be possible by governmental enactment?

While some governments, particularly the Soviets, use every direct and indirect device to have the Covenant reflect a form of statism, the Human Rights Commission has successfully maintained the position that each government must decide for itself how the specified objectives shall be approached. The primary intention of the economic, social and cultural provisions is to encourage and assist states in achieving such progress in these areas as may be needed. Whether for humanitarian or for strategic reasons the United States cannot remain aloof from a movement of this kind, especially when its own way of life is, in no sense, thereby endangered. The pertinent article as presently drafted reads as follows:

Each State Party hereto undertakes to take steps, individually and through international cooperation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this Covenant by legislative as well as by other means.

3. *The International Covenant does not assume that governments have the authority to grant rights but*

it recognizes certain rights which flow from the inherent dignity of the human person and which governments are therefore obligated to safeguard.

The Covenant is criticized in some quarters because it does not state clearly enough the basis of human rights and particularly because it does not refer to rights as inalienable as a result of man's creation in the image of God. It is a fact that the Covenant does not mention the Name of God. The reason for this is that a minority of governments hold a materialistic point of view and the majority, as a matter of fairness, do not see fit to force their views on those who believe otherwise. While one may deplore this failure to mention explicitly the ultimate basis of human rights, one may seriously question whether the United Nations should proceed in any different fashion. It is the distinctive task of the churches to bring men to faith and to a profession of that faith. They cannot rightfully expect the United Nations to seek to accomplish by "legal fiat" that which constitutes their own task. An expression of faith can emerge in political organizations when the churches have measurably succeeded in accomplishing their mission.

It is, however, quite incorrect to say that the Covenant proceeds on the philosophy that governments grant rights. It clearly states that "the rights and freedoms recognized in this Covenant flow from the inherent dignity of the human person." The rights and freedoms are not granted in the sense that a government has the power to give or to take away. Their existence is recognized, and the Covenant seeks to safeguard their exercise from any kind of unwarranted restriction. While seeking ultimately to have any international approach to human rights founded upon the belief in man's nature and destiny as a child of God, every intermediate effort to impose the view that rights are granted by any human agency has been and must continue to be firmly opposed.

4. The International Covenants, in that they are non-self-executing treaties, will not automatically become the law of the land, but their provisions are to be given effect by domestic legislation.

It has been claimed that the Covenants upon ratification by the United States would become the supreme law of the land under Article 6 of the United States Constitution and would therefore become automat-

ically enforceable by our Congress. There are in reality, as pointed out by the United States Supreme Court, two types of treaties — self-executing and non-self-executing. Where a treaty is non-self-executing its provisions are not enforceable by the courts. Congress would enact such legislation as it deems necessary to fulfill its treaty obligation and only the laws which it passes would be enforceable in the courts.

The present provision in the Covenant makes it clearly a non-self-executing treaty. Paragraph 2 of Article 1 reads:

Where not already provided for by existing legislative or other measures, each State undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures as may be necessary to give effect to the rights recognized in this Covenant.

Thus there are various important checks and restraints that would be observed before the provisions of the International Covenants became effective. Ratification would require appropriate action by the Executive and by the Senate. The manner in which the provisions of the treaty are to be given effect in this country would be determined by the laws which Congress would enact. The Supreme Court could be called upon to decide whether any provisions of the treaty are unconstitutional. Those who claim that such an International Covenant is a self-executing treaty and will automatically become the law of the land are in error — ignorantly or intentionally. Those who fear that our rights may be abridged even by a non-self-executing treaty can find reassurance in the constitutional restraints that can, if needed, be brought into play.

5. *The International Covenants as presently contemplated are intended to take into full account the relations between a federal government and its constituent states, provinces or cantons.*

The contention has been made that the Covenants would place under Federal jurisdiction matters which are now under State jurisdiction and thus infringe the rights of States under the Constitution of the United States. The United States is not the only country

which operates under a Federal system and consequently it is rather generally recognized that the Covenant must take into full account the situation which here exists. While no final action has thus far been taken the United States has proposed the following article and continues to insist that a provision of this kind must be incorporated in any final document:

In the case of a Federal State, the following provisions shall apply:

(a) With respect to any articles of this Covenant which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for federal action, the obligations of the federal government shall to this extent be the same as those of parties which are not Federal States;

(b) With respect to articles which are determined in accordance with the constitutional processes of that State to be appropriate in whole or in part for action by the constituent states, provinces or cantons, the federal government shall bring such articles, with favorable recommendation, to the notice of the appropriate authorities of the states, provinces or cantons at the earliest possible moment.

SERIOUS QUESTIONS

I am confident that the criticisms with which I have thus far dealt are unfounded. Unfortunately, they are being publicized with a resulting confusion and apprehension. Every effort should be made to counteract those which have no basis in fact and which seriously impair the effectiveness of the contribution which the United States should make to the promotion of freedom throughout the world. In discounting false criticism the complete picture has not yet been painted. Serious questions are being raised about the possibility of bringing to rapid completion a Covenant which would accomplish the purposes for which it is designed. Three of these questions merit particular attention.

It is generally recognized that the exercise of human rights cannot be brought about merely by law, treaty,

or covenant. A legal approach can be effective only when a sufficiently high percentage of the people concerned already favor the rights for which provision is to be made and in fact practice them. Viewing the situation on a world scale, has a sufficiently high level of understanding and practice been achieved to give a Covenant a good chance of succeeding? Will not more preparatory work be required before the time is opportune for using the device of an International Covenant for promoting the observance of human rights?

We are today living in a divided world and the competition of two major systems of life is aggravated by a conflict of power interests. Moreover, many disturbing political problems among nations which seek to work harmoniously with each other remain unresolved. An atmosphere of tension affects the process of drafting the Covenant and every issue is approached with a view to political advantage. Is the present international climate favorable for producing the kind of Covenant which the high cause of human rights merits?

Differing concepts of human rights and the tense world situation make it exceedingly difficult to prepare covenants which will fully meet the purposes for which they are designed. The present drafts contain defects which obviously must be removed. Will the provisions in the final form be such that adoption and ratification should be supported?

Questions such as these cannot be answered definitively, but the known situations which prompt them suggest the value of exploring various ways in which the desired end can be most surely and most securely attained.

SUGGESTED STEPS

I believe that every effort should be made to complete an *adequate* Covenant or Covenants *as rapidly as possible*. This will require the continuation of serious and diligent participation in the process of producing the best possible documents. However, a longer period than originally anticipated may be required. This should be no cause for concern and may result in a more effective instrument.

In face of the three questions previously raised it

should be possible to devise certain steps which will in themselves further the cause of human rights and will at the same time contribute to conditions under which a Covenant will be more likely to succeed. For purposes of study and exploration I suggest the following:

(1) That the Commission on Human Rights recommend the widest possible study of the draft Covenants, not only by foreign offices and other branches of governments, but also by non-governmental organizations and agencies all around the world. This may delay final action somewhat, but would have the benefit of making the Covenant when completed a document which will reflect the critical thinking of people in many walks of life. In the long run, effective action may thereby be speeded.

(2) That the Commission on Human Rights should be empowered to spend a larger proportion of its next session on matters that do not pertain strictly to the Covenant but could nevertheless materially aid the progress of the Covenant. Among the items which could profitably command the Commission's attention are: the development of methods whereby the Universal Declaration can be more widely studied and applied; the inauguration of a system of reporting, emphasizing situations where the violation of rights recognized in the Universal Declaration has been successfully combatted, and an analysis of the methods which were found effective; the promotion of national human rights committees with more clear-cut plans and programs; exploration of a plan whereby national governments could accept an international obligation for such rights set forth in the Declaration as they may designate; the collection or drafting of simple laws by which governments could give national effect to provisions of the Declaration and which would indicate types of national legislation for implementing provisions of the Covenant; an experimentation with procedure on petitions in order to test the adequacy of any petition or complaint procedure to be incorporated in the Covenant; continued cooperation with UNESCO, ILO and WHO to ascertain the appropriate part which these specialized agencies can play in giving effect to the provision of the Covenants.

CONCLUSION

The criticisms which have been directed to the International Covenants will serve a useful purpose if they stimulate level-headed thinking and honest discussion. We have enjoyed a considerable freedom in our own land and we seek to preserve it and to extend it without discrimination to all within our borders. The dignity and worth of man in God's sight place upon us a moral obligation to promote the observance of human rights for all men everywhere throughout the world. As we bend ourselves to this goal, we shall contribute to the building of a solid foundation for a world society where peace and justice can prevail.

The people and government of the United States have a clear responsibility to participate fully in the United Nations program for promoting the observance of human rights. The work of preparing the International Covenants must go forward. In addition, imaginative study of many procedures should lead to a varied and more inclusive program to serve the cause of freedom. Enlightened self-interest and altruism combine to underscore our task.

